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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

DOMINIC LEUNG,

Defendant.

Case No. CR 12-00083 PJH

**UNITED STATES' SENTENCING  
MEMORANDUM AND MOTION FOR  
DOWNWARD DEPARTURE PURSUANT  
TO U.S.S.G. §5K1.1**

Date: December 15, 2017  
Time: 9:00 a.m.  
Court: Hon. Chief Judge Phyllis J. Hamilton

The United States respectfully requests that this Court sentence defendant Dominic Leung to (1) serve eight months of custody, based on the government's motion for a downward departure of 35% from the low end of the applicable Guidelines range for substantial assistance; (2) serve three years of supervised release; and (3) pay a criminal fine of \$7,500, restitution in the amount of \$45,429, and a \$100 special assessment. This sentence is consistent with the parties' Fed. R. Crim. P. 11(c)(1)(A) and (B) plea agreement.

**BACKGROUND**

Defendant Dominic Leung is a real-estate investor who participated in the bid-rigging conspiracy at the Contra Costa County foreclosure auctions beginning as early as May 2009 and

1 continuing until in or about January 2011. Dkt. 38 (Plea Agreement), ¶ 2. As a member of the  
 2 conspiracy, Leung reached agreements with competitors to refrain from bidding at the public  
 3 auctions on selected properties and participated in the rounds.

4 Leung initially started buying properties at trustee sales in approximately 1995 while  
 5 working for Wilson Young as an employee of Young's company, JWI Corporation. Presentence  
 6 Report ("PSR") ¶ 9. Leung worked for Young until 2007, when Leung began selling jewelry on  
 7 the internet. *Id.* In 2009, Leung returned to the trustee sales, this time working for himself and  
 8 using money from a family friend to buy properties. *Id.*

9 By July or August 2009, Leung decided that he needed help with his business and invited  
 10 Hilton Wong<sup>1</sup> to work with him. *Id.* ¶ 10. At the start of Wong's employment, Leung explained  
 11 everything about the trustee sales to Wong. *Id.* Wong attended both the auctions and the rounds  
 12 as a representative of Leung. *Id.* Leung and Wong often attended the auctions and rounds  
 13 together but, at times, Leung attended them without Wong or Wong attended them without  
 14 Leung and communicated with Leung by telephone. *Id.*

15 Leung participated in rounds (either by himself or through Wong, acting as his  
 16 representative, or both) on approximately 100 properties, of which he purchased approximately  
 17 25 rigged properties. *Id.* ¶ 11. The parties have agreed that the affected volume of commerce is  
 18 \$2.07 million. *Id.* The plea agreement obligates Leung to pay \$45,429 in restitution, which  
 19 corresponds to a portion of the payoffs that he received through the conspiracy. *Id.*

20 Leung was initially interviewed by the FBI on January 11, 2011. During that interview,  
 21 he stated that he had never participated in any rounds, pay-off schemes, or non-competition  
 22 agreements, and had no knowledge of such activities relating to foreclosure auctions. *Id.* ¶ 12.  
 23 In March 2012, Leung agreed to plead guilty and cooperate with the government. *Id.* Leung met  
 24 with the FBI again in April 2012 and admitted to his participation in rounds and payoffs. *Id.*  
 25 Leung also met with the FBI for another interview later in April 2012. *Id.*

26 Defendant was charged by Information in February 2012 with one count of bid rigging

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27 <sup>1</sup> In a related case, Hilton Wong was sentenced to three years of probation, including home confinement with  
 28 electronic location monitoring for a period of eight months. *See United States v. Hilton Wong*, No. CR 12-00082  
 PJH, Dkt. 50 (Sept. 6, 2017).

1 (15 U.S.C. § 1) and one count of conspiracy to commit mail fraud (18 U.S.C. § 1349), and  
 2 pleaded guilty to both counts in March 2012. Dkt. 1, 11, 12. Those pleas were later withdrawn  
 3 by stipulation, and in October 2016, defendant pleaded guilty to the bid-rigging charge only,  
 4 pursuant to a revised plea agreement, and the fraud count was dismissed on the government's  
 5 motion. Dkt. 36, 37, 38.

## 6 ARGUMENT

### 7 A. Sentencing Guidelines Calculations

#### 8 1. Criminal History

9 In Paragraph 12 of the Plea Agreement, the parties agree that defendant's Criminal  
 10 History Category is determined by the Court. The PSR calculates defendant's Criminal History  
 11 Category as I, based on the lack of any prior criminal history, and the United States agrees. PSR  
 12 ¶ 31.

#### 13 2. Offense Level

14 The PSR calculates the total offense level as 13, consistent with the plea agreement. *Id.*  
 15 ¶ 26. This calculation includes a one-level increase to the base offense level of 12 for conduct  
 16 involving the submission of non-competitive bids, a two-level increase for a volume of  
 17 commerce exceeding \$1 million, and a downward adjustment of two levels for acceptance of  
 18 responsibility. U.S. Sentencing Guidelines Manual ("U.S.S.G.") §§2R1.1(a)-(b), 3E1.1 (U.S.  
 19 Sentencing Comm'n 2010).

20 Under the Sentencing Guidelines, an offense level of 13 for a defendant in Criminal  
 21 History Category I results in a sentence ranging from 12 to 18 months (Zone C).

#### 22 3. Fine and Restitution

23 The PSR calculates a fine range of \$20,700 to \$103,500, consistent with the plea  
 24 agreement. PSR ¶ 59; U.S.S.G. §2R1.1(c)(1) (fine range shall be from one to five percent of the  
 25 volume of commerce, but not less than \$20,000). In Paragraph 9 of the plea agreement, the  
 26 government agrees to recommend a fine between \$7,500 and \$75,000. (This fine range was  
 27 initially agreed to by the parties in the original plea agreement, based on the application of the  
 28 fraud Guidelines, and was carried over to the revised plea agreement.)

1 As for restitution, while the Mandatory Victim Restitution Act, 18 U.S.C. § 3663, does  
 2 not apply to this case, restitution is permitted under 18 U.S.C. § 3583(d) (restitution as  
 3 discretionary condition of supervised release). In Paragraph 11 of the plea agreement, the parties  
 4 agreed to recommend that the Court order defendant to pay restitution in the amount of \$45,429.

5 **B. Basis for Downward Departure for Substantial Assistance**

6 The government moves, pursuant to Section 5K1.1 of the Guidelines, for a downward  
 7 departure for substantial assistance to the investigation under the Rule 11(c)(1)(B) plea  
 8 agreement in this case. The government recommends a 35% reduction from the low end of the  
 9 Guidelines range of twelve months, resulting in a sentence of approximately eight months.

10 This reduction is based in large part on the timing of defendant's plea. After the  
 11 investigation went public in 2011, defendant was among the earliest to agree to plead guilty and  
 12 cooperate in the government's investigation, and thus likely influenced many other of his  
 13 coconspirators to plead guilty as well. The government's recommendation is also based on the  
 14 extent and value of the information provided by defendant. After he was initially interviewed by  
 15 the FBI in January 2011, defendant sat for two debrief interviews with the government, during  
 16 which he described a number of rounds and payoffs that he had participated in and explained  
 17 certain records relating to those rounds and payoffs. These interviews were useful to the  
 18 government for their corroborative value, especially because they occurred early in the  
 19 investigation. However, defendant did not testify in any of the subsequent trials. Based on the  
 20 foregoing, a thirty-five percent reduction for substantial assistance is appropriate.

21 **C. Sentencing Recommendation**

22 The government's recommendation of an eight-month sentence is reasonable and not  
 23 greater than necessary in light of the factors articulated in 18 U.S.C. § 3553. Defendant's  
 24 sentence should reflect the seriousness of the offense, promote respect for the law, and afford  
 25 adequate deterrence to future bid-rigging offenses and white-collar crime generally, as the  
 26 government has argued in the related cases.

27 Defendant profited directly from the approximately 100 rigged auctions that he  
 28 participated in, both by receiving more than \$45,000 in payoffs and by being able to buy over

1 \$2 million worth of properties at discounted prices through suppressed bidding at the public  
2 auctions. Given the magnitude of the financial harm caused by defendant's conduct, the  
3 government's recommendation, which includes a custodial term, is appropriate and consistent  
4 with the commentary in the applicable Guidelines.

5 The government recognizes, however, that defendant has expressed remorse for his role  
6 in the offense, chose to cooperate with the government's investigation, is a first-time offender,  
7 and has agreed to pay restitution. While the government is recommending custody here, as it has  
8 in all the related cases, these factors have led this Court to impose probationary sentences for  
9 similarly-situated defendants.

10 **CONCLUSION**

11 For the foregoing reasons, the United States respectfully requests that this Court  
12 sentence defendant Dominic Leung to (1) serve an eight-month custodial sentence; (2) serve  
13 three years of supervised release; and (3) pay a criminal fine of \$7,500, restitution in the  
14 amount of \$45,429, and a \$100 special assessment.

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16 Dated: December 8, 2017

Respectfully submitted,

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18 /s/ MICHAEL RABKIN  
19 United States Department of Justice  
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21 Antitrust Division  
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